

Remarks

1. Summary of the office action

In the office action mailed June 11, 2009, (i) the Examiner rejected claims 1-3, 5, 7, 8, 11-15, 17-21, 23, 38, 61-63, 68-75, 78-81, and 84-89 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0083439 (Eldering) in view of U.S. Patent No. 5,848,397 (Marsh), and (ii) the Examiner rejected claims 31 and 39 under 35 U.S.C. § 103(a) as being unpatentable over Eldering in view of Merriman and U.S. Patent No. 7,017,173 (Armstrong). In this office action, the Examiner did not provide any identification of the Merriman. Applicant assumes that Merriman is U.S. Patent No. 5,948,061, which was cited by the Examiner to reject claims 31, 39, and 52 in the office action mailed December 19, 2008.

2. Amendments and pending claims

Applicant has amended claims 74, 75, 78, and 79. Claims 1-3, 5, 7, 8, 11-15, 17-21, 23, 31, 38, 39, 61-63, 68-75, 78-81, and 84-89 are pending. Of the pending claims, claims 1 and 38 are independent.

Claims 74 and 75 contained a typographical error in that the element "re- valuating" was missing an -- e -- after the hyphen as in claims 1 and 38. Applicant has amended claims 74 and 75 by adding an -- e -- so that the term "re- valuating" reads as "re-evaluating."

Claims 78 and 79 mistakenly omitted the word -- the -- prior to the word client. Applicant has amended claims 78 and 79 by adding the word -- the -- immediately prior to the word "client" in each of these claims.

3. Response to the claim rejections under 35 U.S.C. § 103(a)

The Examiner rejected claims 1-3, 5, 7, 8, 11-15, 17-21, 23, 38, 61-63, 68-75, 78-81, and 84-89 under 35 U.S.C. § 103(a) as being obvious over Eldering and Marsh.

a. Claims 1 and 38

Applicant respectfully submits that the Examiner has not established *prima facie* obviousness of independent claims 1 and 38 because the combination of Eldering and Marsh is not sufficient to have rendered the invention recited in claims 1 and 38 obvious to a person having ordinary skill in the art at the time the invention was made.

First, claims 1 and 38 both recite, *inter alia*, ***wherein the weight rule of at least one of the ad control files comprises an equation for calculating a weight value that increases proportionately to time passed.*** Applicant submits that Eldering and Marsh do not reasonably lead to this element recited in claims 1 and 38.

In rejecting claims 1 and 38, the Examiner stated that Eldering's collection of targeting metadata for each ad is taken to represent the claimed "ad control files," whereby each targeting parameter of Eldering relates to the claimed trigger parameters. *See*, office action, page 3, lines 19-21. The Examiner then stated that Eldering does not appear to teach a weighted placement value for an ad derived by a product of a re-determined placement value and the ad's weight value whereby the ad's weight value is based upon the ad control file's weight rule which includes an equation for proportionate weight value increasing as time passes. *See*, office action, page 4, lines 5-8.

To make up for these deficiencies of Eldering, the Examiner turned to Marsh. The Examiner stated that Marsh teaches that a server can deliver the advertising content as well as the metadata ("ad control information" such as expiration, maximum user

impressions, etc.) needed for the client to determine queue sorting and advertisement placement. The Examiner then stated that one of the aspects deemed important to advertising sorting and display is sorting the queue based on 'time since last seen' (tsls) as well as an (advertised-special) criteria for each ad, namely pre-defined weights such as $c2=TSLS_WEIGHT$. These are used in a typical equation which multiplies terms with coefficients to determine a queue order of ads, and the ads can be displayed in accordance with the queue. *See*, office action, page 4, lines 10-18.

As stated above, the Examiner identified Eldering's metadata as the claimed "ad control files," and the Examiner identified Marsh's "ad control information" as metadata. Eldering discloses advertisements and advertisement metadata, including advertisement resource locators (ARLs) are delivered by one or more channels of a head end system. *See*, Eldering, paragraph 0074.

Marsh discloses that each advertisement includes control information such as the expiration date for the advertisement and the maximum number of times the advertisement may be shown to a user, along with a priority assigned by the server system (e.g., HIGH, MEDIUM, LOW, NO). *See*, Marsh, column 8, lines 49-54. Furthermore, Marsh discloses that in a representative embodiment, certain predetermined characteristics of the advertisements contained therein include time to expiration (tte), time since last seen (tsls), maximum exposures (me), and percent remaining exposures (pre). *See*, Marsh, column 9, lines 43-47. Furthermore still, Marsh discloses that for an advertisement referred to as "MSG₁," tte has a value of 5 days, tsls has a value of 1 hour, me has a value of 100, and pre has a value of 40, and a client system can substitute the

values into a hyperplane equation. See, Marsh, column 10, lines 61-65, and column 11, lines 60-65.

Even if it is assumed, for the sake of argument, that a person having ordinary skill in the art at the time of Applicant's invention would have modified Eldering so that Eldering's metadata included predetermined characteristics of the advertisement such as title, tags, meta, and pre, and so that a client system of Eldering substituted the values of the predetermined characteristics into a hyperplane equation, Applicant submits that the combination of Eldering and Marsh do not reasonably lead to *wherein the weight rule of at least one of the ad control files comprises an equation for calculating a weight value that increases proportionately to time passed*, as recited in claims 1 and 38.

Next, claim 1 recites "*for each of the at least one of the ads associated with a respective weight value, the client multiplying the re-evaluated placement value associated with that ad by the weight value associated with that ad so as to determine a weighted placement value for that ad.*" Similarly, claim 38 recites "*for each of the at least one of the ads associated with a respective weight value, the client-side machine multiplying the re-evaluated placement value associated with that ad by the weight value associated with that ad so as to determine a weighted placement value for that ad.*"

Even if it is assumed, for the sake of argument, that the Marsh's hyperplane equation is contained within an ad control file for a given ad and that the hyperplane equation is used to determine a weight value for that ad, Applicant submits that the combination of Eldering and Marsh do not reasonably lead to multiplying a re-evaluated placement value associated with the given ad by the weight value associated with the given ad so as to determine a weighted placement value for the given ad. Rather,

Eldering and Marsh, at best, disclose using the hyperplane equation to yield a respective value associated with each of two adjacent ads in an ad queue and comparing the respective values so as to determine whether the positions of the ads in the queue should be swapped. *See*, Marsh, column 12, lines 7-46.

Even if it is further assumed, for the sake of argument, that a product of the hyperplane equation is a weight value, Applicant submits that the combination of Eldering and Marsh's disclosure of comparing products determined through the use of the hyperplane equation (i.e., weight values, according to the assumption) does not reasonably lead to (i) for each of the at least one of the ads associated with a respective weight value, the client *multiplying the re-evaluated placement value associated with that ad by the weight value* associated with that ad so as to determine a weighted placement value for that ad, as recited in claim 1, and (ii) for each of the at least one of the ads associated with a respective weight value, the client-side machine *multiplying the re-evaluated placement value associated with that ad by the weight value* associated with that ad so as to determine a weighted placement value for that ad, as recited in claim 38.

Because Eldering and Marsh do not reasonably lead to each and every element of claims 1 and 38, Applicant submits that the combination of Eldering and Marsh is not sufficient to have rendered the invention recited in claims 1 and 38 obvious to a person having ordinary skill in the art at the time the invention was made, and Applicant submits the Examiner has not established *prima facie* obviousness of claims 1 and 38. Applicant further submits that claims 1 and 38 are therefore in condition for allowance.

b. Claims 2-3, 5, 7, 8, 11-15, 17-21, 23, 61-63, 68-75, 78-81, and 84-89

Without conceding the assertions made by the Examiner with respect to dependent claims 2-3, 5, 7, 8, 11-15, 17-21, 23, 61-63, 68-75, 78-81, and 84-89, Applicant submits that claims 2-3, 5, 7, 8, 11-15, 17-21, 23, 61-63, 68-75, 78-81, and 84-89 are allowable for at least the reason that each of these claims depends from one of allowable claims 1 and 38.

c. Claims 31 and 39

The Examiner rejected claims 31 and 39 under 35 U.S.C. § 103(a) as being obvious over Eldering in view of Merriman and Armstrong. Claims 31 and 39 depend from one of independent claims 1 and 38, and necessarily include all of the elements of one of claims 1 and 38. As stated above, Eldering and Marsh do not reasonably lead to (i) wherein the weight rule of at least one of the ad control files comprises an equation for calculating a weight value that increases proportionately to time passed, and (ii) for each of the at least one of the ads associated with a respective weight value, the client (or client-side machine) multiplying the re-evaluated placement value associated with that ad by the weight value associated with that ad so as to determine a weighted placement value for that ad, as recited in claims 1 and 38. Applicant submits that Merriman and Armstrong do not make up for these deficiencies of Eldering and Marsh, and Applicant submits that claims 31 and 39 are therefore in condition for allowance.

4. Conclusion

Applicant believes that all of the pending claims have been addressed in this response. However, failure to address a specific rejection or assertion made by the

Examiner does not signify that Applicant agrees with or concedes that rejection or assertion.

For the foregoing reasons, Applicant submits that claims 1-3, 5, 7, 8, 11-15, 17-21, 23, 31, 38, 39, 61-63, 68-75, 78-81, and 84-89 are in condition for allowance. Therefore, Applicant respectfully requests favorable reconsideration and allowance of all of the claims.

Respectfully submitted,

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